

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SHARON K. PHILPOTT, an individual,

Plaintiff,

v.

ERNST & YOUNG LLP, a Delaware limited  
liability partnership, ERNST & YOUNG U.S.  
LLP, a Delaware limited liability partnership,  
and THE ERNST & YOUNG U.S., LLP  
MEMBERS' TOP HAT PLAN,

Defendants.

Case No.:  
COMPLAINT

Plaintiff Sharon K. Philpott, for her Complaint, alleges as follows:

**I. PARTIES**

1. Plaintiff Sharon Philpott is an individual residing in Seattle, King County, Washington, and who was employed by Defendant Ernst & Young in its Seattle office at the time of her termination.

2. She is a "participant" as defined by 29 U.S.C. § 1002(7), in The Ernst & Young U.S. LLP Members' Top Hat Plan.

3. Defendant Ernst & Young LLP is a Delaware limited liability partnership with its principal place of business in New York, New York.

4. Defendant Ernst & Young U.S. LLP is a Delaware limited liability partnership

1 with its principal place of business in New York, New York.

2 5. The Ernst & Young U.S. LLP Members' Top Hat Plan (the "Plan") is an  
 3 "employee pension benefit plan" under 29 U.S.C. § 1002(2)(A), and a "plan" under 29 U.S.C.  
 4 § 1002(3), which may be sued as an entity pursuant to 29 U.S.C. § 1132(d)(1). Ernst & Young  
 5 U.S., LLP holds itself out as the administrator of the Plan. The three defendants are collectively  
 6 referred to herein as "EY" or "Defendants."

## 7 II. JURISDICTION AND VENUE

8 6. This civil action arises under ERISA, 29 U.S.C. § 1001, *et seq.*, the Washington  
 9 Law Against Discrimination, RCW 49.60, *et seq.*, and the Washington Wage Withholding  
 10 Statute, RCW 49.48 *et seq.* This Court has jurisdiction over the subject matter of this Complaint  
 11 pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1). This Court also has jurisdiction over  
 12 this case under 28 U.S.C. § 1332 in that there is diversity of citizenship between the parties and  
 13 the amount in controversy exceeds \$75,000.

14 7. This Court has jurisdiction over the Defendants pursuant to RCW 4.28.185, as  
 15 Defendants transact business within the state and own, use or possess property situated in this  
 16 state.

17 8. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) & (c), 29 U.S.C.  
 18 § 1132(e)(2), and RCW § 4.12.025.

## 19 III. FACTS

20 9. Sharon Philpott ("Ms. Philpott" or "Plaintiff") was an employee of Ernst &  
 21 Young for over 22 years and an audit partner for almost 10 years.

22 10. Ms. Philpott's most recent assignment with Ernst & Young had been with the  
 23 Seattle office, where she had served for over four years until her termination in June 2009.

24 11. On March 10, 2009, Ms. Philpott was notified that EY wanted her to voluntarily  
 25 withdraw for the Partnership effective July 3, 2009, the end of the fiscal year. Ten days later she  
 26 received a Release and Agreement asking her to submit her letter of voluntary withdrawal and to  
 27 release all past, present and future claims against EY, including releases pertaining to the Plan.

1 No deadline was fixed for execution of the Release and Agreement.

2 12. At the time of her termination, Ms. Philpott was only four years away from  
3 vesting in pension benefits provided under the Plan whereby she would have been eligible to  
4 receive an annual pension beginning at age 58 through her life expectancy, age 84.

5 13. Ms. Philpott met with Kay Matthews, Vice Chairman of EY and a member of its  
6 U.S. Executive Board, on April 16, 2009, to discuss gender bias she had experienced at Ernst &  
7 Young, which had led both to a hostile work environment and diminished professional  
8 opportunities; Ms. Philpott also raised questions regarding the timing and amounts owed to her if  
9 she voluntarily withdrew from the partnership effective July 3, 2009. Ms. Matthews trivialized  
10 Plaintiff's concerns regarding gender bias and did not provide answers to Ms. Philpott's  
11 questions regarding the transition payments offered.

12 14. Following that meeting Ms. Philpott relayed some of her concerns via a letter  
13 dated May 1, 2009, to Ms. Matthews and Mr. Gary Belski, Senior Vice Chair and Chief  
14 Operating Officer of EY. In the wake of the April 16, 2009 meeting and the subsequent letter,  
15 and because Ms. Philpott raised concerns about gender discrimination, on June 5, 2009, Ms.  
16 Philpott was informed that EY would cut short the date of her separation, pushing it up to June  
17 16, 2009, unless Ms. Philpott voluntarily withdrew from the Firm and signed a release of all  
18 claims by June 12, 2009. Ms. Philpott's request for additional time was denied.

19 15. When asked for an explanation for this prejudicial act, Ms. Matthews responded  
20 that "things have changed." However, the only thing that had changed was that Ms. Philpott had  
21 complained of gender bias at EY and questioned the calculation of her transition payments.

22 16. On information and belief, no contemporaneous investigation was conducted by  
23 Defendant regarding Plaintiff's complaint of gender bias.

24 17. As a result of Defendants' actions, Ms. Philpott was deprived of wages she had  
25 been promised.

26 18. On June 16, 2009, Ms. Philpott was summarily terminated (involuntarily  
27 separated from the partnership) by EY Chairman and CEO Jim Turley.

1           19. EY operates under an Agreement of Partners and Principals, which governs the  
2 rights and obligations of its partners.

3           20. Section B of the Agreement of Partners and Principals contains “The Ernst &  
4 Young U.S. LLP Members’ Top-Hat Plan” (the “Plan”). EY provides retirement benefits to a  
5 group of partners via the Plan.

6           21. Upon information and belief, under the pension governed by this Plan, Ms.  
7 Philpott would have received an annual benefit of approximately \$291,734.00 if she had retired  
8 or voluntarily withdrawn or was involuntarily separated from the Firm at age 50 and began  
9 collecting benefits at age 58, or if she had retired at age 58, her annual pension benefit would  
10 have been approximately \$400,000.00 per year.

11           22. EY contends that under the Agreement of Partners and Principals it is required to  
12 settle the unfunded balance of an employee’s Deferred Vested Benefit in the Member’s  
13 Retirement Plan if such member is under the age of 50.

14           23. In a June 9, 2009 memorandum from EY’s Director of Administration,  
15 Partnership Operations, John Herndon, to EY’s Bryan Segedi, Stephen Cohen, Kay Matthews  
16 and Scott Peterson, Mr. Herndon wrote to enclose a “revised calculation of the financial  
17 arrangement for Sharon K. Philpott, who is resigning from the firm as of June 12, 2009.” The  
18 memorandum notes that Ms. Philpott “refused” to sign the Release and Agreement sent to her on  
19 March 20, 2009, and that the package reflects the minimum obligation that EY had to Ms.  
20 Philpott under the Agreement of Partners and Principals.

21           24. The memorandum states that this revised calculation of the financial arrangement  
22 with Ms. Philpott was requested by EY’s U.S. Executive Board. The memo also states Ms.  
23 Philpott’s separation had received approval of EY’s Partnership Review Committee, which is a  
24 subset of the U.S. Executive Board.

25           25. In this memorandum, EY purported to calculate the value of Ms. Philpott’s  
26 Deferred Vested Benefit under the terms of the Plan. The result was determined by first  
27 calculating the present value of the future stream of retirement benefits, using a 9% discount rate

1 and normal life expectancy. In effect, this meant that in order to obtain the full benefit EY owed  
 2 to her under the Plan, Ms. Philpott would need to individually invest and earn a 9% return on the  
 3 amount that EY was transferring to her as the unfunded balance of her Deferred Vested Benefit  
 4 in her pension Plan.

5 26. In a September 18, 2009 letter to Ms. Philpott, Mr. Herndon stated that EY had  
 6 revised its discount factor from 9% to 8% and its methodology for settling the Deferred Vested  
 7 Benefit under the Plan. EY paid Ms Philpott the additional amounts owed to her under this  
 8 revised methodology. The use of an 8% discount rate is wholly unreasonable. It is unrealistic to  
 9 expect a return at that rate for an individual investor, particularly where that individual investor  
 10 should be shifting her assets into more conservative investments as she nears retirement age.

11 27. The use of the 8% discount rate is not justified by the term of the Plan. The term  
 12 “present value” is not defined in the Plan, and EY is not granted any discretion to construe that  
 13 phrase. In the context presented here, the phrase refers to a rate of return that an individual  
 14 participant, while invested in prudent investments, could expect to receive upon withdrawal. EY  
 15 has no discretion under the Plan to interpret the terms of the Plan otherwise, and has violated the  
 16 Plan and ERISA by applying an 8% discount rate.

#### 17 **IV. FIRST CLAIM: RETALIATION**

18 28. Plaintiff realleges and incorporates by reference the allegations contained in  
 19 paragraphs 1 through 27 as if fully set forth herein.

20 29. Ms. Philpott complained of gender discrimination, which is a protected activity.

21 30. Due to her complaints of gender discrimination, EY shortened Plaintiff’s  
 22 employment, thereby subjecting her to an adverse employment action.

23 31. Defendants’ retaliatory action constitutes a violation of the Washington Law  
 24 Against Discrimination, RCW 49.60.210(1).

25 32. As a result of Defendants’ retaliatory actions, Plaintiff has been denied wages and  
 26 other benefits of employment in an amount to be proven at trial.

27 33. As a result of Defendants’ retaliatory actions, Plaintiff has suffered and continues

1 to suffer severe emotional distress in an amount to be proven at trial.

2 **V. SECOND CLAIM: WRONGFUL WITHHOLDING OF WAGES**

3 34. Plaintiff realleges and incorporates by reference the allegations contained in  
4 paragraphs 1 through 33 as if fully set forth herein.

5 35. Defendants' wrongful denial of wages and other benefits constitutes a willful  
6 violation of RCW 49.48 *et. seq.* and 49.52.070 and Ms. Philpott is entitled to damages, including  
7 double damages, in an amount to be proven at trial.

8 **VI. THIRD CLAIM: ERISA**

9 36. Plaintiff realleges and incorporates by reference the allegations contained in  
10 paragraphs 1 through 35 as if fully set forth herein.

11 37. Plaintiff is a participant under the Plan, is entitled to seek remedies under 29  
12 U.S.C. § 1132. Specifically, pursuant to 29 U.S.C. § 1132(a)(1)(B), Plaintiff is entitled to (1)  
13 recover her benefits under the terms of the Plan, (2) enforce her rights under the terms of the  
14 Plan, and (3) clarify her right to benefits under the terms of the Plan.

15 38. Plaintiff is also entitled to equitable relief pursuant to 29 U.S.C. § 1132(a)(3)  
16 including, without limitation, an injunction prohibiting Defendants from applying an improper  
17 and unreasonable present value deduction.

18 39. Plaintiff is also entitled to her attorney fees and costs of suit as allowed by 29  
19 U.S.C. § 1132(g)(1).

20 **VII. PRAYER FOR RELIEF**

21 WHEREFORE, plaintiff prays for relief as follows:

22 1. A permanent injunction restraining all Defendants from depriving departing Plan  
23 participants of the full benefits of the Plan;

24 2. Judgment in favor of Plaintiff against all Defendants on all causes of action;

25 3. An award of compensatory damages in an amount to be proven at trial;

26 4. An award of double damages with respect to Plaintiff's claim of wrongful  
27 withholding of damages;

5. An award of the value of pension benefits owed;

6. An award of prejudgment interest in an amount to be proven at trial;

7. An award of Plaintiff's costs of this civil action, together with her reasonable attorney fees, pursuant to 29 U.S.C. § 1132(g)(1), RCW 49.60.030 and RCW 49.48.030, equity, statute, court rule, or common law.

8. An award of such other and further relief, including equitable relief under ERISA, as the Court may deem just and proper.

DATED this 12th day of February, 2010.

STOKES LAWRENCE, P.S.

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